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To: CN=Dave Kluesner/OU=R2/O=USEPA/C=US@EPA
Cc: CN=Deborah Mellott/OU=R2/O=USEPA/C=US@EPA; CN=Patricia Hick/OU=R2/O=USEPA/C=US@EPA; CN=Amelia Wagner/OU=R2/O=USEPA/C=US@EPA; CN=Kedari Reddy/OU=R2/O=USEPA/C=US@EPA; Kathleen Abdus-Salaam; CN=Elizabeth Butler/OU=R2/O=USEPA/C=US@EPA; CN=Ray Basso/OU=R2/O=USEPA/C=US@EPA; CN=Tom Taccone/OU=R2/O=USEPA/C=US@EPA; CN=Sarah Flanagan/OU=R2/O=USEPA/C=US@EPA; N=Patricia Hick/OU=R2/O=USEPA/C=US@EPA; CN=Amelia Wagner/OU=R2/O=USEPA/C=US@EPA; CN=Kedari Reddy/OU=R2/O=USEPA/C=US@EPA; Kathleen Abdus-Salaam; CN=Elizabeth Butler/OU=R2/O=USEPA/C=US@EPA; CN=Ray Basso/OU=R2/O=USEPA/C=US@EPA; CN=Tom Taccone/OU=R2/O=USEPA/C=US@EPA; CN=Sarah Flanagan/OU=R2/O=USEPA/C=US@EPA; N=Amelia Wagner/OU=R2/O=USEPA/C=US@EPA; CN=Kedari Reddy/OU=R2/O=USEPA/C=US@EPA; Kathleen Abdus-Salaam; CN=Elizabeth Butler/OU=R2/O=USEPA/C=US@EPA; CN=Ray Basso/OU=R2/O=USEPA/C=US@EPA; CN=Tom Taccone/OU=R2/O=USEPA/C=US@EPA; CN=Sarah Flanagan/OU=R2/O=USEPA/C=US@EPA; N=Kedari Reddy/OU=R2/O=USEPA/C=US@EPA; Kathleen Abdus-Salaam; CN=Elizabeth Butler/OU=R2/O=USEPA/C=US@EPA; CN=Ray Basso/OU=R2/O=USEPA/C=US@EPA; CN=Tom Taccone/OU=R2/O=USEPA/C=US@EPA; CN=Sarah Flanagan/OU=R2/O=USEPA/C=US@EPA; N=Tom Taccone/OU=R2/O=USEPA/C=US@EPA; CN=Sarah Flanagan/OU=R2/O=USEPA/C=US@EPA; N=Sarah Flanagan/OU=R2/O=USEPA/C=US@EPA
Subject: Fw: Passaic River Article - Herald News: River polluter to sue sewer utility
Date: Thursday, June 08, 2006 9:43:15 AM
Attachments: Kluesner.Dave@epamail.epa.gov
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Eli.Reinhartz@noaa.gov Subject

Ellen Simon, the Corps of Engineers' lawyer on the Passaic, called and forwarded this to me. It seems that Scott Nicholson forwarded your clipping re: the Tierra notice of intent to sue directly to Col. Polo before she even knew about it. She was embarrassed since the Colonel knew about it before she did even though it is a legal matter. She asked if I would ask you to include her on your distribution list(s). If you have any questions, please call me at X 3118. Thanks.

----- Forwarded by Delmar Karlen/R2/USEPA/US on 06/08/2006 09:37 AM -----

"Simon, Ellen B NAN02" <Ellen.B.Simon@nan02.usace.army.mil>

06/08/2006 09:31 AM

To Delmar Karlen/R2/USEPA/US@EPA

cc

Subject FW: Passaic River Article - Herald News: River polluter to sue sewer utility

My e-mail address is ellen.b.simon@usace.army.mil

Ellen B. Simon

Assistant District Counsel

U.S. Army Corps of Engineers

New York District

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From: Nicholson, Scott R NAN02

Sent: Wednesday, June 07, 2006 7:27 PM

To: Polo, Richard COL NAN02

Cc: Slezak, William F NAN02; Piken, Stuart NAN02; Creamer, Thomas NAN02; Simon, Ellen B NAN02

Subject: FW: Passaic River Article - Herald News: River polluter to sue sewer utility

Sir,

FYI, Tierra filed their notice of intent to sue PVSC over the release of contaminants into the Lower Passaic River. PVSC serves 48 municipalities in Passaic, Bergen, Essex and Hudson counties.

Scott

-----Original Message-----

From: Kluesner.Dave@epamail.epa.gov [<mailto:Kluesner.Dave@epamail.epa.gov>]

Sent: Wednesday, June 07, 2006 9:52 AM

To: Yeh.Alice@epamail.epa.gov; Basso.Ray@epamail.epa.gov; Hick.Patricia@epamail.epa.gov; Mellott.Deborah@epamail.epa.gov; Wagner.Amelia@epamail.epa.gov; Butler.Elizabeth@epamail.epa.gov; Reddy.Kedari@epamail.epa.gov; Stern.Eric@epamail.epa.gov; McCabe.Bill@epamail.epa.gov; Pavlou.George@epamail.epa.gov; Schaaf.Eric@epamail.epa.gov; Karlen.Delmar@epamail.epa.gov; Buckrucker, Elizabeth A NWK; Lisa Baron; Vadino, Carolyn J NAN02; Rychlenski, Ann; steve ryshlenski; Thompson, Scott; BFidler@PIRNIE.COM Scott.R.Nicholson; Reyhan Mehran; Janine.MacGregor@dep.state.nj.us; tim_kubiak@fws.gov; Muzikar, Elke; Mark.Herzberg@dep.state.nj.us; Nicholson, Scott R NAN02; Weppler, Peter M NAN02; Tom.Brosnan@noaa.gov; LWarner@PIRNIE.COM; Shugert, Peter H NAN02; Eli.Reinharz@noaa.gov

Subject: Passaic River Article - Herald News: River polluter to sue sewer utility

River polluter to sue sewer utility

Wednesday, June 7, 2006

By JENNIFER H. CUNNINGHAM

HERALD NEWS

One of the major polluters of the Passaic River plans to sue the Passaic Valley Sewerage Commissioners for part of the costs of cleanup.

Tierra Solutions Inc. of East Brunswick, whose predecessor company, Diamond Alkali, dumped toxic chemicals into the lower Passaic for more than 20 years, has filed a "notice of intent" to sue the sewerage commission, charging that the commission's sewer system also allowed dioxins, a known human carcinogen, to flush into the Passaic River during heavy rains, based on a 1989 federal report.

Rich Ambrosino, spokesman for the sewerage commission, on Tuesday dismissed Tierra's notice as a "legal strategy to catch as many responsible parties as possible to reduce the cleanup costs on them."

According to the Superfund law governing cleanup of hazardous waste sites, any entity that handled, treated, or transported hazardous waste is responsible for the costs of investigating and cleaning up the affected areas. But several experts familiar with the Superfund law characterized Tierra's potential lawsuit as a misapplication of that law -- including former Gov. Jim Florio, who authored the Superfund law as a congressman in 1980.

"The intent was not to bring in public authorities or municipalities, but it's evolved because now responsible parties bring them in," Florio said in a telephone interview Tuesday.

"The thought was that public authorities are not responsible for the problems because they were handling municipal waste."

Diamond Alkali, which was re-branded as Tierra Solutions in 2002, was a Newark-based manufacturer that made herbicides such as Agent Orange. The latter was widely used as a defoliant during the Vietnam War and affected thousands of Vietnam veterans' health. For more than 20 years, the company discharged dioxin, a by-product of herbicide production, into the Newark Bay estuary, including

parts of the lower Passaic River.

In small doses, dioxins cause cloracne, or boils that appear on the face, armpits and groin. But in larger amounts, dioxins increase the risk of cancer, diabetes and birth defects, according to the EPA. Dioxins are difficult to eliminate once introduced into the environment, and settle into sediment at the bottom of waterways.

The Environmental Protection Agency came to a legal agreement with Tierra Solutions and 42 other polluters in March 2004, under which the companies would pay at least \$10.7 million to investigate remediation of the lower Passaic River. The state Department of Environmental Protection is suing Tierra Solutions, charging that the company "deliberately polluted the Passaic with ... a particularly potent form of dioxin," according to court documents.

A spokeswoman for the DEP did not return a telephone call Monday seeking comment.

To date, Tierra Solutions, which no longer manufactures herbicides, but bills itself as a business consultancy, has paid \$50 million toward their own study and cleanup of the river, according to Michael Turner , Tierra's corporate spokesman.

"The Passaic River is the cradle of the Industrial Revolution," he said. "To say

that one company is responsible (for the pollution) is a little short-sighted."

Carter H. Strickland Jr. , an attorney and professor at Rutgers University's Environmental Law Clinic, said it's common for former polluters to drag third parties into hazardous waste cleanups, but he questioned the validity of Tierra's claim.

"It's probably more for publicity than getting any money directly," he said.

The Passaic Valley Sewerage Commissioner's treatment facility in Newark, which serves 48 municipalities in Passaic, Bergen, Essex and Hudson counties, continues to release untreated effluents into the river when it tops its capacity of 330 million gallons of wastewater per day, Ambrosino said. This can happen when heavy rains overflow the commission's combined sanitary and storm sewers, flushing untreated wastewater into the Passaic River.

Ambrosino said that a \$100 million plan to upgrade the commission's combined sewers and revamp the treatment plant to handle excess flow was shelved last year, following an administration change at the EPA's Region No. 2 office, which serves New Jersey, New York, Puerto Rico and the U.S. Virgin Islands.

"The agreement is kind of coming apart. It kind of hit a wall," said Ambrosino.

The Lower Passaic River Restoration Project, a partnership of about a half-dozen federal and state agencies, is still assessing the damage to the river in order to recommend the most effective means of cleaning up, said EPA spokesman David Kluesner.

"We are looking at the feasibility of taking some sort of early action on the Passaic River to identify possible ways of reducing the flow of contaminants down the river," he said. "We are making progress."

Reach Jennifer H. Cunningham at (973) 569-7162 or Cunningham@northjersey.com.

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David Kluesner

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